IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6426 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MALSHIBHAI K ROSHIA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR RC KODEKAR AGP for Respondents No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The order of detention dated June 28, 2000 passed by the District Magistrate, Jamnagar in exercise of powers conferred on him by sub.section-2 of section-3 of

the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short) against the petitioner is the subject matter of challenge in the present petition which is filed under Article-226 of the Constitution.

2. The grounds of detention supplied to the detenu indicate that the detenu is owner of M/s. Kirti Petrol Pump, Lalpur, By-pass Road, Jamnagar. In view of the materials placed before him, the detaining authority found that from the retail outlet, adulterated petrol was being sold at high price than prescribed by the authorities. The detaining authority was, therefore, satisfied that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of commodity essential to the community. Therefore, the detaining authority made an order on June 28, 2000 directing to detain the petitioner.

3. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of the order of detention. However, it is not necessary to refer to all of them, except one, which in my opinion, deserves acceptance.

4. The learned counsel for the petitioner submitted that on behalf of the detenu, his Advocate had addressed a representation dated July 10, 2000 to the detaining authority with a request to forward the same to the State Government for its consideration and as there was delay on the part of the detaining authority in forwarding the representation to the State Government, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in paragraph-3(S) of the petition.

5. It may be stated that the detaining authority has not filed any Affidavit-in-Reply controverting the averments made in the petition. Mr. P.R. Shukla, Deputy Secretary to Government, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed Affidavit-in-Reply on behalf of the Government. From the averments made in paragraph-5 of the said reply, it is evident that the detaining authority had forwarded incomplete representation of the detenu to the State Government on July 13, 2000. As incomplete representation was sent by the detaining authority, the State Government had no alternative, but to direct the detaining authority to send complete representation so as to enable it to consider the same. Therefore, a

direction was given on July 14, 2000 to the detaining authority to send complete representation of the detenu. The said direction was complied with on 14th July, 2000. After receipt of complete representation from the detaining authority, it was considered by the State Government and rejected on July 18, 2000. The record of the case indicates that the order of detention was approved by the State Government on July 7, 2000 and the representation sent by the detaining authority was considered and rejected by the detaining authority on July 13, 2000.

6. In view of the decision of the Supreme Court in NavalShanker Ishwarlal Dave Vs State of Gujarat, AIR 1994 (SC) 1496, the detaining authority has no power to revoke the order of detention once it is approved by the State Government. Therefore, it was futile for the detaining authority to consider the representation made by the detenu and reject it by an order dated July 13, 2000. Moreover, he had forwarded incomplete representation of the detenu to the State Government and had forwarded complete representation of the detenu only after he was asked to do so by the State Government. No explanation has been offered by the detaining authority as to why incomplete representation of the detenu was forwarded by him to the State Government. The Supreme Court has observed in catena of decisions that what is relevant is not length of delay, but, the explanation which may be offered by the concerned authority for inaction. In the present case, the detaining authority has failed to justify its action of forwarding incomplete representation to the State Government by filing reply. The representation was received by him on July 12, 2000 and therefore, instead of considering the same, he should have forwarded forthwith the same to the State Government for its consideration as he had no power to revoke the detention order once it was approved by the State Government. In Danabhai M. Makwana Vs State of Gujarat and Otrs., Special Civil Application no.78 of 2000, decided on March 16, 2000 by Hon'ble Mr. Justice A.L. Dave, a view has been taken that unexplained delay of 2 days on the part of the detaining authority in forwarding the representation to the State Government vitiates the continued detention. I respectfully agree with the view expressed by the learned Single Judge of this Court in the above referred to decision.

7. Having regard to the facts of the case, there is no manner of doubt that forwarding of incomplete representation to the State Government has resulted into violation of the right of the detenu guaranteed under

Article-22(5) of the Constitution and the continued detention has become illegal.

8. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with reference to other case. Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)
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